

## Taper: Gomillion versus Lightfoot

Herbert Levine

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whether capital punishment today is consistent with the increased sophistication and moral tenor of our society.

Into the cauldron of knowledge, Mr. Bedau has poured the relevant statistics, the moral, religious and philosophical arguments on which an opinion can be intelligently formed as to the advisability, the need, and the moral justification of the death penalty. As a professor at Reed College and a Carnegie Fellow in Law and Philosophy at Harvard Law School, Professor Bedau personally adds a dozen essays where he finds it necessary to fill the void in existing available literature.

Although the editor makes no pretense regarding his partiality to the abolitionists, perhaps the most compelling arguments found in this book for the abolition of the death penalty seem to be exactly those arguments offered as a plea for the retention of the supreme penalty. Consider, for example, the argument of J. Edgar Hoover:

As a representative of law enforcement, it is my belief that a great many of the most vociferous cries for abolition of capital punishment emanate from those areas of our society which have been insulated against the horrors man can and does perpetrate against his fellow beings. Certainly, penetrative and searching thought must be given before considering any blanket cessation of capital punishment in a time when unspeakable crimes are being committed. The savagely mutilated bodies and mentally ravaged victims of murderers, rapists and other criminal beasts beg consideration when the evidence is weighed on both sides of the scales of Justice.<sup>4</sup>

This attitude, in juxtaposition to the sociological studies, religious and philosophical presentations and columns of facts and statistics regarding recidivism, offered by the abolitionists, seems to be self-defeating. Perhaps, it may be argued that this quotation, out of context, is merely a rhetorical device to depict the proponents of the death penalty as hysterical and irrational. I leave it to the reader to determine whether Mr. Hoover, or for that matter Edward J. Allen (Chief of Police, Santa Ana, California), Professor Sidney Hook or Jacques Barzun, fare any better as advocates of the retention of the death penalty.

It is in the concluding chapter of this anthology that I find the most compelling arguments. The talented journalists who humanize the problem of human fallibility in specific cases seem to make the point in such a way that is otherwise lost in the morass of statistics and sociological gibberish. This conclusion reveals my own partiality; however, the ultimate decision of the reader will hopefully be more informed on having acquainted himself with *The Death Penalty In America*, by Hugo Adam Bedau.

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<sup>4</sup> BEDAU, *THE DEATH PENALTY IN AMERICA* 130 (1964).

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*Gomillion versus Lightfoot*. By BERNARD TAPER. New York: McGraw Hill Book Company, Inc., 1962. Pp. 131. \$1.95.

Rapid changes in the law of apportionment have taken place in the few years following the United States Supreme Court decision in *Gomillion v.*

*Lightfoot*.<sup>1</sup> Any review of Mr. Taper's work must include an examination of the later decisions to properly assess the significance of this pivotal case.

Mr. Taper is a reporter, but he is not a lawyer. He has reported well the situation precipitating the commencement of this action and conducts us, with his adept writing, through the oral arguments before the United States Supreme Court. The reader will find that Mr. Taper has spent a good deal of time describing events similar to those that have been reported in the daily press. He reports in great detail the frustrating experiences of highly educated Negroes attempting to become registered voters. Much of this, however, is not material to the legal issues in *Gomillion*.

Three and one half years before the Supreme Court of United States heard this matter, Charles G. Gomillion, Chairman of the Tuskegee Institute's Division of Social Sciences, commenced this action in the federal court, attacking Alabama's reapportionment law which had changed the shape of the City of Tuskegee from a square to a city with twenty-eight sides. Tuskegee Institute was not part of the newly formed city as it formerly had been. Consequently, much of its highly educated faculty was unable to vote within the new city. Professor Gomillion claimed such reapportionment was merely a device to deny him the right to vote in Tuskegee. This, he claimed was in violation of the due process and equal protection clauses of the fourteenth amendment, and his right to vote as guaranteed by the fifteenth amendment.

The Supreme Court of the United States had to decide whether the federal courts could intercede when a state, regardless of the reason, alters the boundaries of its political subdivisions. The federal courts below, relying upon Justice Felix Frankfurter's decision in *Colegrove v. Green*,<sup>2</sup> would not act in this situation.

In *Colegrove*, three Illinois voters had attempted to prevent the holding of Congressional elections due to alleged inequalities in the population of the Congressional Districts. They wanted the Illinois Legislature to reapportion creating substantially equal districts. The majority of the Court held that there was no federal requirement that Congressional Districts contain, as nearly as practical, an equal number of inhabitants, and further, that the question was not a justicial one.

Gomillion, the petitioner, pleaded that his case differed from *Colegrove* in that the City of Tuskegee had reapportioned only to deprive Negroes of their right to vote. This was racial discrimination. The respondents answered that the State of Alabama had the absolute right to alter its internal boundaries regardless of motives, and if judicial self-limitation was not practiced by the Court, it would find itself involved in local politics of all sorts.

Justice Frankfurter, writing for the majority, had no trouble distinguishing the two cases. This was not a mere internal dispute over political boundaries as in *Colegrove*, but rather a discriminatory deprivation of the plaintiff's voting rights, on racial grounds, through the use of a reapportionment scheme. Such reapportionment violated the Fifteenth Amendment.

In an epilogue, the author briefly reports on *Baker v. Carr*,<sup>3</sup> which followed *Gomillion*, wherein the Court struck down the Tennessee Apportionment Act,

<sup>1</sup> 364 U.S. 339 (1960).

<sup>2</sup> 328 U.S. 549 (1946).

<sup>3</sup> 369 U.S. 186 (1962).

finding that it was a discriminatory apportionment plan for representation in the State Legislature. It became settled law that a justiciable federal question is presented when there is an allegation that a malapportionment denied equal protection of the law.

*Wright v. Rockefeller*,<sup>4</sup> which followed *Baker*, seemed at the time to indicate that the Supreme Court would follow a so-called "invidious discrimination" test in both Congressional and legislative apportionment cases. In *Wright*, citizens on Manhattan Island alleged that one white district and three Negro districts for Congressional elections were created by the New York Legislature. The Court failed to find that the legislature used a racial standard in creating the districts and would not interfere.

The *Reynolds*<sup>5</sup> and *Wesberry*<sup>6</sup> cases set a new standard. The test now required equal representation for equal numbers of people as was practicable, although the Court did not set any exact mathematical formula to accomplish this. The rule applies to state legislative and Congressional elections.

In *Reynolds*, the Supreme Court found that certain Alabama districts for state elections were not apportioned on a population basis and this violated the Fourteenth Amendment. In *Wesberry*, the Court found great disparities in the sizes of Congressional districts in Georgia. This, the Court said, violated article one, paragraph two, of the United States Constitution, which provides that Congressmen shall be chosen "by the People of the Several States."

In light of the later decisions, the author's conclusion was well founded. He wrote:

When students of the law in the future assess the significance of *Gomillion v. Lightfoot*, one of that case's more important effects will be seen to be that it prepared the way for the Court's opinion in the larger malapportionment case. It provided just the reassuring stepping-stone the Justices needed if they were to cross the wide, turbulent river between what they had ruled in the past on *Colgrove v. Green* and what they saw they now had to rule in *Baker v. Carr*.<sup>7</sup>

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<sup>4</sup> 376 U.S. 52 (1964).

<sup>5</sup> *Reynolds v. Sims*, 377 U.S. 533 (1964).

<sup>6</sup> *Wesberry v. Sanders*, 376 U.S. 1 (1964).

<sup>7</sup> TAPER, GOMILLION VERSUS LIGHTFOOT 119 (1962).

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